tioner was the victim of certain attorneys' neglect cannot withstand examination as to the length of delay between the Order of Dismissal by the Circuit Court of Appeals and petitioner's attempt to restore the appeal to that Court's calendar. More than three years elapsed between that order and petitioner's appeal for restoration to the Circuit Court of Appeals.

Federal Rules of Appellate Procedure, Rule 26(b) permits an appellant, on good cause shown, to seek an extension of time in which to do an act required by the said Rules. Rule 31(a) clearly requires that the appellant file his brief within forty days after the date onwhich the record is filed with the Court of Appeals. Rule § 0.18(7) of the Rules Relating to the Organization of the Court of Appeals for the

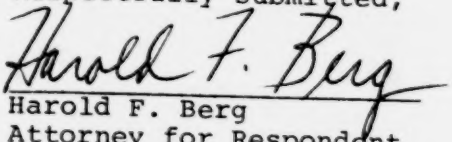
Second Circuit states that the Clerk of the Circuit Court of Appeals, unless otherwise directed, shall enter an order dismissing the appeal in a case where a brief for the appellant has not been filed within nine months of docketing of the appeal and no stipulation extending the time for filing has been filed. Such an order was entered on June 12, 1972. More than three years later, petitioner, pro se, requested the Circuit Court to "restore" the matter to its calendar.

CONCLUSION

Respondent respectfully requests that petitioner's petition for a writ of certiorari to the United States Court of Appeals for the Second

Circuit be denied.

Respectfully submitted,



Harold F. Berg
Attorney for Respondent
521 Fifth Avenue
New York, New York 10017

Counsel:

Harold F. Berg
Arnold R. Streit

A P P E N D I X

FEDERAL
RULES OF APPELLATE PROCEDURE
for the
United States Court of Appeals

Rule 26. COMPUTATION AND EXTENSION OF TIME.

(b) ENLARGEMENT OF TIME. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of

the United States, except as specifically authorized by law.

Rule 31. FILING AND SERVICE OF BRIEFS.

(a) TIME FOR SERVING AND FILING BRIEFS. The appellant shall serve and file his brief within 40 days after the date on which the record is filed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. If a court of appeals is prepared to consider cases on the merits promptly after briefs are filed, and its practice is to do so, it may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for

classes of cases, or by order for specific cases.

UNITED STATES
COURT OF APPEALS
For The
SECOND CIRCUIT

PART I-RULES RELATING TO THE ORGANIZATION OF THE COURT

§ 0.18. ENTRY OF ORDERS BY THE CLERK

The clerk shall prepare, sign and enter the following without submission to the court or a judge unless otherwise directed:

(7) Orders dismissing appeals in all cases where a brief for the appellant has not been filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.